

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

October 28, 2022

Agenda ID #21096

Ratesetting

**TO PARTIES OF RECORD IN APPLICATION 21-01-017:**

This is the proposed decision of Administrative Law Judge Hazlyn C. Fortune. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 1, 2022, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:mef

Attachment

ALJ/HCF/mef

PROPOSED DECISION

Agenda ID #21096 (Rev.1)

Ratesetting

12/1/2022 Item #18

Decision PROPOSED DECISION OF ALJ FORTUNE (Mailed 10/28/2022)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of San Gabriel Valley  
Water Company (U337W) for  
Authority to Apply Facilities Fees to  
Fund Upgrades to Water Treatment  
Facilities in the Fontana Water  
Company Division.

Application 21-01-017

**DECISION ADOPTING A SETTLEMENT AGREEMENT,  
AUTHORIZING THE USE OF FACILITIES FEES TO OFFSET THE COSTS FOR  
PLANT UPGRADES, AND SETTING THE RATE OF INTEREST FOR  
ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION AND  
POST-IN-SERVICE EXPENSES**

## TABLE OF CONTENTS

Title	Page
DECISION ADOPTING A SETTLEMENT AGREEMENT, AUTHORIZING THE USE OF FACILITIES FEES TO OFFSET THE COSTS FOR PLANT UPGRADES, AND SETTING THE RATE OF INTEREST FOR ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION AND POST-IN-SERVICE EXPENSES.....	2
Summary.....	2
1. Background.....	3
2. Settlement Agreement.....	5
3. Discussion.....	7
3.1. Review of Settlement Agreement.....	7
3.1.1. Standard of Review.....	7
3.1.2. Settlement Is Reasonable in Light of the Whole Record.....	8
3.1.3. Settlement Is Consistent with the Law.....	8
3.1.4. Settlement Is in the Public Interest.....	9
3.1.5. Conclusion.....	11
3.2. Review of Disputed Issues.....	11
3.2.1. Standard of Review.....	11
3.2.2. AFUDC Interest Rate During Construction and Reasonableness of Project Funding Mechanisms.....	12
3.2.2.1. San Gabriel.....	12
3.2.2.2. Cal Advocates.....	13
3.2.2.3. Conclusion.....	14
3.2.3. Post-in-Service Capitalized Interest Rate.....	16
3.2.3.1. San Gabriel.....	16
3.2.3.2. Cal Advocates.....	17
3.2.3.3. Conclusion.....	17
4. Comments on Proposed Decision.....	18
5. Assignment of Proceeding.....	<del>18</del> <u>19</u>
Findings of Fact.....	<del>18</del> <u>19</u>
Conclusions of Law.....	<del>19</del> <u>20</u>
ORDER.....	<del>20</del> <u>21</u>

Attachment A

**DECISION ADOPTING A SETTLEMENT AGREEMENT,  
AUTHORIZING THE USE OF FACILITIES FEES TO OFFSET THE COSTS FOR  
PLANT UPGRADES, AND SETTING THE RATE OF INTEREST FOR  
ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION  
AND POST-IN-SERVICE EXPENSES**

**Summary**

This decision adopts the settlement agreement (Settlement Agreement) between San Gabriel Valley Water Company (San Gabriel) and the Public Advocates Office of the California Public Utilities Commission. In so doing, this decision authorizes San Gabriel, consistent with the Settlement Agreement, to apply facilities fees to offset the costs of planning, designing, and constructing upgrades to water treatment facilities at the Fontana Water Company Division's (Fontana) Sandhill/Summit Treatment Plant (Project). The facilities fees as well as other contributions received to fund the Project upgrades shall be recorded as Contributions in Aid of Construction. The Settlement Agreement is appended to this decision as Attachment A and resolves all issues in this proceeding, except for two, concerning (1) the interest rate for Allowance for Funds Used During Construction and (2) the post-in-service capitalized interest rate.

This decision also resolves the two outstanding disputed issues by setting: (1) the rate of interest for Allowance for Funds Used During Construction at San Gabriel's currently applicable rate for short-term debt; and (2) the post-in-service capitalized interest rate at San Gabriel's currently applicable rate for short-term debt.

All costs associated with the improvements to water treatment facilities in Fontana as part of the Project shall be subject to reasonableness review in San Gabriel's next general rate case. This application is closed.

**1. Background**

On January 29, 2021, San Gabriel filed the instant Application (A.) 21-01-017 seeking authority to use facilities fees to offset the costs of planning, designing, and constructing upgrades to the Sandhill/Summit Treatment Plant (Project) as part of its Fontana operations.<sup>1</sup> San Gabriel also intends to rename the Sandhill Water Treatment Plant ~~to~~ the Summit Treatment Plant.

The Sandhill Treatment Plant was originally constructed in the 1960s to comply with federal water quality standards by treating and processing local surface water at Lytle Creek.<sup>2</sup> It currently consists of a diatomaceous earth (DE) filtration facility, a conventional treatment facility, and a hydroelectric generation facility. The hydroelectric generation facility was added in 2013 to reduce the electricity costs of operating the DE and conventional water treatment facilities.<sup>3</sup> Decades of use and more rigorous water quality standards prompted San Gabriel to construct the conventional treatment facility in the early 2000s; it was completed and placed into service in 2008.<sup>4</sup>

According to San Gabriel, Fontana's water supply mix is dependent on and vulnerable to fluctuations in surrounding hydrological conditions, groundwater levels, water quality, and impacts from contamination.<sup>5</sup> San Gabriel asserts that the proposed Project would support meeting current

<sup>1</sup> San Gabriel operates in Los Angeles County and San Bernardino County, producing, treating, storing, distributing, and selling water. San Gabriel has two divisions: the Los Angeles County Division and the Fontana Water Company Division.

<sup>2</sup> Application of San Gabriel Valley Water Company, January 29, 2021, at 7.

<sup>3</sup> *Id.* at 7-9.

<sup>4</sup> *Id.* at 9.

<sup>5</sup> *Id.* at 9-10.

customer water demand, vary its water supply sources, and comply with current updated federal and state drinking water standards.<sup>6</sup>

The Public Advocates Office of the California Public Utilities Commission (Cal Advocates) filed a protest to the application on March 3, 2021. San Gabriel filed a response to the protest on March 8, 2021.

On April 29, 2021, a prehearing conference was held. San Gabriel and Cal Advocates (referred to collectively as Parties hereinafter) are the only parties to this proceeding.

On July 12, 2021, the assigned Commissioner issued the Scoping Memo and Ruling (Scoping Memo) in this proceeding. Parties engaged in negotiations between July 13, 2021, through August 26, 2021. A telephonic status conference was held on August 27, 2021. Parties clarified during the August 27, 2021, status conference that they had not reached settlement on all issues in the application and indicated that they wished to continue negotiating.

On August 31, 2021, the Administrative Law Judge (ALJ) issued an e-mail ruling providing directions for evidentiary hearings scheduled to start on September 7, 2021, through September 9, 2021.

On September 7, 2021, Parties met in a continued status conference and developed a revised proposed schedule for the evidentiary hearings. Later in the day on September 7, 2021, Parties informed the ALJ that they had reached a settlement resolving most of the disputed issues in the proceeding. Parties further clarified they agreed to litigate two issues solely through admittance of exhibits and briefing, and therefore the evidentiary hearings scheduled for September 8, 2021, and September 9, 2021, were no longer needed. The ALJ

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<sup>6</sup> *Id.* at 20.

issued a ruling with an updated proceeding schedule on September 8, 2021, accordingly.

On September 27, 2021, Parties filed a joint motion for approval of the Settlement Agreement and a request to move exhibits into evidence. Briefs were filed on October 11, 2021, and Reply Briefs on October 25, 2021, to address the unresolved issues. The record of this proceeding consists of all filed documents and all exhibits as admitted into the record.

On September 23, 2022, the assigned Commissioner issued an Amended Scoping Memo in this proceeding. The Amended Scoping Memo added an additional issue to the scope that was introduced in the Settlement Agreement but had not been included in the initial scoping memo dated July 12, 2021.

## **2. Settlement Agreement**

The Settlement Agreement and its terms and conditions resolve most of the issues scoped in this proceeding and is supported by both parties and in testimony that is part of the record in this proceeding.<sup>7</sup> Specifically, the Settlement Agreement provides that San Gabriel should be authorized to implement the following:

1. Design, permit,<sup>8</sup> and construct two new filters, including extension of the existing filter gallery, associated piping, chemical related facilities, and control system upgrades to the Conventional Treatment facility;
2. Decommission and remove the outdated DE filtration facility;
3. Modify Summit's five filters (three existing filters and two newly constructed filters) by replacing the dual media

<sup>7</sup> Settlement Agreement Between San Gabriel and Cal Advocates, September 27, 2021, at 2.

<sup>8</sup> Permits for the demolition and removal of the DE facility and other local construction permits.

(anthracite coal and sand) with granular activated carbon (GAC) under the specified conditions;

4. Modify the Project scope (to include the construction of six GAC contactors, a low lift pumping station, associated piping, and equipment). Permission would be granted by Tier 1 Advice Letter, if DDW<sup>9</sup> does not approve of the treatment modification presented in item number 3 above;
5. Submit annual information-only Advice Letters, on or before March 31st of each year, until the Project is completed, so that the Commission, Cal Advocates, Water Division staff, and other interested parties can monitor the Project progress. The Settlement Agreement details what must be included in the annual Advice Letter filing;
6. Allow for a general rate case (GRC) reasonableness and prudence review; conditions of the review are outlined in the Settlement Agreement. Moreover, San Gabriel commits to exclude the capital costs of the Project from rate base. No Project costs, including Allowance for Funds Used During Construction (AFUDC) and post-in-service capitalized interest related to the Project, will ever be included in San Gabriel's rate base, or become the responsibility of residential customers for ratemaking purposes;
7. Apply Facilities Fees to fund Summit upgrades. Facilities Fees, as well as any grants or other contributions received to offset the Project costs, shall be recorded as contributions in aid of construction:
  - a. San Gabriel shall record the costs of planning, designing, and constructing the Project in a separate project work order; and
  - b. San Gabriel will offset all such recorded Project costs with the amount of Facilities Fees San Gabriel collects pursuant to Fontana's Tariff Schedule No. FO-FF (Fontana Facilities Fees) until all of the Project costs

<sup>9</sup> Division of Drinking Water (DDW), a part of the California State Water Resources Control Board.



have been offset and reimbursed; including the cost of San Gabriel's funding of the Project recorded as an allowance for funds used during construction on the unreimbursed balance during construction, if any, and post-in-service capitalized interest on the unreimbursed balance after the Project is completed and placed in service, if any, until all of the Project costs are offset and reimbursed by Facilities Fees.

### **3. Discussion**

#### **3.1. Review of Settlement Agreement**

##### **3.1.1. Standard of Review**

Pursuant to Rule 12.1(d),<sup>10</sup> parties presenting a settlement agreement have the burden of proof to demonstrate whether the Commission should adopt the Settlement Agreement. Rule 12.1(d) provides:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Proponents of a settlement agreement have the burden of proof of demonstrating that the proposed settlement meets the requirements of Rule 12.1 and should be adopted by the Commission.<sup>11</sup>

As discussed below, the Commission reviewed the Settlement Agreement and finds that it is reasonable in light of the whole record, consistent with the law, and in the public interest.

##### **3.1.2. Settlement Is Reasonable in Light of the Whole Record**

Under the terms of the Settlement Agreement, San Gabriel would design and construct upgrades to the existing water treatment facility, remove the DE

<sup>10</sup> All references to the Rule or Rules in this decision refer to the Commission's Rules of Practice and Procedure.

<sup>11</sup> Decision (D.) 12-10-019 at 14-15; D.09-11-008 at 6.

filtration facility from the Project assets, and make modifications to the existing filters at the Project to improve the water quality for San Gabriel's customers.

The Settlement Agreement requires San Gabriel to record the costs of planning, designing, and constructing the Project in separate Project work orders and to offset recorded Project costs from facilities fees it collects pursuant to Fontana's Tariff Schedule No. FO-FF.

Other features of the Settlement Agreement allow for ongoing monitoring during the Project through annual advice letters and a GRC reasonableness and prudence review at completion. The ability to amend the scope of the Project after DDW testing and approval was an important component of the Settlement Agreement and a reasonable compromise to control Project costs.

Cal Advocates had raised concerns about the prudence of the costs for the proposed plant upgrades, and the Settlement Agreement makes modifications to the Project that lower costs and includes testing and reporting oversight.

Taken together, these components of the Settlement Agreement settle issues that are within the scope of this proceeding and are reasonable in light of the whole record and should be adopted by the Commission.

### **3.1.3. Settlement Is Consistent with the Law**

On September 27, 2021, San Gabriel and Cal Advocates filed a joint motion to introduce the Settlement Agreement. This filing is compliant with Rule 12.1. The motion contained the required justifications including a statement of factual and legal considerations adequate to advise the Commission of the terms of the settlement. Parties convened the requisite conference meeting per Rule 12.1(b) with notice and opportunity to participate provided to all parties.

There are no statutory provisions or prior Commission decisions that would be contravened or compromised by the approval of this Settlement Agreement. Therefore, the Settlement Agreement is consistent with the law.

#### **3.1.4. Settlement Is in the Public Interest**

As discussed below, the Settlement Agreement is in the public interest. Improved water quality would be achieved through compliance with safe drinking water standards; energy savings will result from decommissioning the DE facility and expanding clean hydro-generation at the conventional facility; and other public health benefits will be attained through reduced levels of total organic compounds (TOC) and elimination of their associated odor.<sup>12</sup>

Furthermore, the Project and the resulting water quality improvements will further the Commission's Environmental and Social Justice (ESJ) goals. In February 2019, the Commission adopted its ESJ Action Plan<sup>13</sup> as a comprehensive strategy and framework for addressing ESJ issues in each proceeding. Environmental justice means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, and enforcement of environmental laws, regulations, and policies.<sup>14</sup>

The ESJ Action Plan is focused on disadvantaged communities. Disadvantaged communities refer to the geographic areas throughout California that suffer from a combination of economic, health, and environmental burdens. These burdens include poverty, high unemployment, air and water pollution,

<sup>12</sup> San Gabriel Response to E-mail Ruling of Administrative Law Judge Hazlyn Fortune Directing Parties to Address Environmental and Social Justice Issues, June 16, 2021, at 3.

<sup>13</sup> Environmental and Social Justice Action Plan, Version 1.0, February 21, 2019.

<sup>14</sup>

<https://www.cpuc.ca.gov/news-and-updates/newsroom/environmental-and-social-justice-action-plan>.

and presence of hazardous wastes, as well as high incidence of asthma and heart disease.<sup>15</sup>

The City of Fontana is in a region identified by the California Environmental Protection Agency's (CalEPA) CalEnviroScreen mapping tool as being in the 80 to 90 percent category for pollution.<sup>16</sup> This designation identifies the City of Fontana as a disadvantaged community.

The proposed Project improvements to enhance the water quality in this area support ESJ Goal 3. Goal 3 aims to improve access to high-quality water, communications, and transportation services for ESJ communities.<sup>17</sup> Other ESJ goals will be furthered by increased economic activity in the City of Fontana through jobs creation.<sup>18</sup>

In addition, the Commission has long acknowledged that, "[t]here is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation."<sup>19</sup> Consistent therewith, Commission approval of the Settlement Agreement will provide efficient resolution of contested issues. This Settlement Agreement will avoid unnecessary litigation, will provide cost recovery sufficient to enable San Gabriel to continue providing safe and reliable water service to its customers while meeting all applicable water quality standards, and protecting ratepayers from rate increases resulting from

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<sup>15</sup>

<https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/infrastructure/disadvantaged-communities>.

<sup>16</sup> Response of Cal Advocates to the Ruling Requesting Comment on Environmental and Social Justice Issues, June 16, 2021, at 2.

<sup>17</sup> ESJ Action Plan at 7.

<sup>18</sup> *Id.* at 3-4.

<sup>19</sup> D.88-12-083, 30 CPUC 2d 189, 221.

unnecessary costs. Based on the foregoing, we find that the Settlement Agreement is in the public interest.

### **3.1.5. Conclusion**

As discussed above, the Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest. In addition, the Settlement Agreement thoughtfully weighed other lower cost alternatives. If the alternative approach for the filter upgrades at the conventional facility is approved by DDW, the Project will cost \$22 million instead of the \$37.7 million<sup>20</sup> estimate included in the application. This would represent close to a \$15.7 million capital cost savings for customers. Therefore, this Settlement Agreement should be adopted by the Commission.

## **3.2. Review of Disputed Issues**

### **3.2.1. Standard of Review**

For the outstanding disputed issues San Gabriel bears the burden of proof to show that the regulatory relief it requests should be granted. The scoped issues that remained disputed and unresolved by the Settlement Agreement are: (1) whether San Gabriel should be authorized to apply AFUDC at its full rate of return while the Project is under construction and not yet used and useful; and (2) whether San Gabriel should be authorized to apply its full authorized rate of return for the post-in-service capitalized interest rate.<sup>21</sup>

<sup>20</sup> San Gabriel Application, January 29, 2021, at 6.

<sup>21</sup> The post-in-service capitalized interest rate issue was introduced in the Joint Motion for Approval of Settlement Agreement filed September 27, 2021, but had not been included in the initial Scoping Memo dated July 12, 2021. The assigned Commissioner issued an Amended Scoping Memo on September 23, 2022, to include this issue in the scope.

### **3.2.2. AFUDC Interest Rate During Construction and Reasonableness of Project Funding Mechanisms**

#### **3.2.2.1. San Gabriel**

San Gabriel, in its brief, recommended that the Commission authorize it to apply its authorized rate of return to company funds temporarily used to finance the Project. According to San Gabriel, this interest rate treatment is appropriate because it represents San Gabriel's overall cost of capital and would also have been the applicable rate if the Project was presented as a rate base project.<sup>22</sup>

To support its position, San Gabriel asserted that, "... to the extent it is required to finance any unfunded portion of the Project, it will do so with a combination of internally generated cash flows (*i.e.*, equity) and long-term debt."<sup>23</sup> San Gabriel indicated that these are the same sources as any ordinary capital project.<sup>24</sup>

San Gabriel claimed that the longstanding cost-of-service ratemaking and regulatory framework is one that provides the utility a reasonable opportunity to recover its cost of providing service, including the cost of capital deployed in the provision of such service, to the public.<sup>25</sup>

San Gabriel stated that its acceptance of Contributions in Aid of Construction does not require a reduction in the rate of return authorized for the utility-funded portion of the Project.<sup>26</sup>

#### **3.2.2.2. Cal Advocates**

<sup>22</sup> Opening Brief of San Gabriel on Remaining Disputed Issues, October 11, 2021, at 7.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

Cal Advocates, in its opening brief, recommended that the Commission reject San Gabriel's request to earn the authorized rate of return on funds temporarily used towards the Project.<sup>27</sup> Cal Advocates argued that the risk profile for the Project does not justify full rate of return treatment, and instead, the interest rate adopted for funds used during construction should be matched to the level of risk.<sup>28</sup> Cal Advocates noted San Gabriel's admission that its investment in this Project is not identical to the type of investment that would be included in rate base, and therefore, eligible for a full rate of return.<sup>29</sup>

Cal Advocates maintained that because San Gabriel will be reimbursed by facilities fees for all temporary contributions it makes to fund to the Project, there is a much lower risk to the company than the typical rate base investment where the risk of regulatory disallowance may justify a full rate of return.<sup>30</sup> Cal Advocates emphasized its argument in its exhibit PAO-1 that, "... a return should be adequate to enable a utility to attract investors to finance the replacement and expansion of a utility's facilities to fulfill its public utility service obligations."<sup>31</sup> Cal Advocates also asserted that, "... developer contributions provide an ongoing and dedicated source of Project funding."<sup>32</sup>

The regulatory account that facilities fees are placed in earns interest at the 90-day commercial paper rate. Cal Advocates argued that San Gabriel should not be permitted to earn a full rate of return (currently 8.12 percent) on

<sup>27</sup> Opening Brief of Cal Advocates, October 11, 2021, at 3.

<sup>28</sup> *Id.* at 3-6.

<sup>29</sup> Exhibit SG-5 (J. Reiker Rebuttal Testimony) at 5.

<sup>30</sup> Opening Brief of Cal Advocates, October 11, 2021, at 4.

<sup>31</sup> Exhibit PAO-1 at 2-25: 4-8.

<sup>32</sup> Opening Brief of Cal Advocates, October 11, 2021, at 5.

temporary contributions to a lower risk investment while ratepayers earn a relatively low interest rate on the facilities fees that will be used to offset the Project costs.

Finally, Cal Advocates claimed that allowing San Gabriel to earn a full rate of return on temporary (financial) contributions to the Project may remove the incentive to manage the Project budget in a prudent manner. Cal Advocates suggested that the Commission treat company funds and developer funds in the same manner by applying the same interest rate to both sources of funds.<sup>33</sup>

### **3.2.2.3. Conclusion**

D.08-05-036 held that, "... the Commission should decide the interest rate treatment based upon the circumstances at hand and the type of financing being used to fund the Project."<sup>34</sup> The categorization of any project as a "capital project," does not automatically entitle a utility to receive AFUDC treatment at its authorized full rate of return. Therefore, in this case, the factual circumstances of the proposed Project and the level of risk the company is exposed to must be considered when determining AFUDC interest rate treatment.

San Gabriel's witness estimated that the entire cost of the Project will be funded by facilities fees in approximately four years.<sup>35</sup> However, San Gabriel in its application estimated that, assuming a rate of customer growth based on the more recent five-year period from 2014 to 2019, the entire cost of the Project will be funded (by facilities fees) in approximately three years.<sup>36</sup> Therefore, since this

<sup>33</sup> Opening Brief of Cal Advocates, October 11, 2021, at 6.

<sup>34</sup> D.08-05-036, Decision Determining Carrying Costs for Memorandum Account, May 29, 2008, at 11.

<sup>35</sup> Exhibit SG-3 at 10.

<sup>36</sup> San Gabriel Application, January 29, 2021, at 28.



Project will be reimbursed by facilities fees in three to four years, it is not a typical long-term capital task requiring more risk and more generous interest rate treatment.

Cal Advocates noted the relatively low risk involved in the funding of the Project and argued that "... the return provided should be commensurate with the risk taken"<sup>37</sup> and argued that the AFUDC interest rate should be set at the 90-day commercial paper rate.

We agree with Cal Advocates that the funding for this Project involves relatively low risk. However, we disagree with Cal Advocates that the AFUDC rate should be set at the 90-day commercial paper rate as that rate would not compensate San Gabriel for the combination of short-term and long-term sources of funds it may use to support the Project.

Instead, we opine that the appropriate AFUDC interest rate for this Project lies between the 90-day commercial paper rate and the full rate of return for capital projects. San Gabriel should be authorized the interest rate that most closely reflects its level of risk and the actual rate it is likely to face, for short-term debt, during the expected period for Project completion. San Gabriel and other water companies operating in California should be encouraged to use facilities fees, as appropriate, to fund needed projects. Using facilities fees benefits customers since they do not increase rates.

This decision therefore sets the rate of interest accrued as AFUDC to be the then-current monthly cost for short-term debt.<sup>38</sup> This approach will compensate San Gabriel for its actual potential funding costs and, further, does not negatively

<sup>37</sup> Opening Brief of Cal Advocates, at 5.

<sup>38</sup> This means that San Gabriel should use whatever financial instruments it would use for short-term debt in compliance with its cost of capital authorizations.

impact its ratepayers. San Gabriel's proposed funding mechanisms for the Project are just and reasonable and in the ratepayer interest. San Gabriel's use of facilities fees is reasonable because this funding approach reduces the need to raise debt and equity capital, and ultimately customer rates.<sup>39</sup>

### **3.2.3. Post-in-Service Capitalized Interest Rate**

#### **3.2.3.1. San Gabriel**

Citing to D.08-05-036, San Gabriel's opening brief argued that regulatory compliance requirements (for water quality) and the long-term nature of the Project support authorizing full rate of return treatment for post-in-service capitalized interest for any capital project. San Gabriel maintained that the Commission should distinguish any capital contributions made to support the Project from the general facilities fees being collected from developers.<sup>40</sup>

Moreover, San Gabriel asserted that the Project must go forward in some form and will require substantial investment.<sup>41</sup> According to San Gabriel, the established ratemaking treatment for capital projects also supports applying the authorized rate of return for post-in-service capitalized interest.<sup>42</sup>

#### **3.2.3.2. Cal Advocates**

Cal Advocates' opening brief argued that it is inappropriate for San Gabriel to earn a full rate of return once the Project is completed and placed into service. According to Cal Advocates, if the Commission authorizes full rate of return treatment, San Gabriel will receive approximately ten times the rate that developers (and, therefore, ratepayers) receive on financial contributions to the

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<sup>39</sup> San Gabriel Application, January 29, 2021, at 26.

<sup>40</sup> Opening Brief of San Gabriel on Remaining Disputed Issues, October 11, 2021, at 10.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Id.* at 9.

same account.<sup>43</sup> Pointing to the low level of financial risk that San Gabriel will experience for this Project, Cal Advocates reiterated the concept that the return should be commensurate with the risk taken.<sup>44</sup>

### **3.2.3.3. Conclusion**

San Gabriel's supply of funds for this Project, whether during construction or post-in-service, is to address the timing mismatch between the use of capital in designing and constructing the Project and the source of capital for the Project from the facilities fees. Whether during construction or post-in-service, the supply of funds that may be provided by San Gabriel is analogous to a short-term bridge loan that will be paid off as facilities fees accumulate. As in Section 3.2.2.3, we rely on D.08-05-036, which held that, "... the Commission should decide the interest rate treatment based upon the circumstances at hand and the type of financing being used to fund the Project."<sup>45</sup> This decision therefore sets the rate of interest for post-in-service expenses to be the then-current monthly cost for short-term debt.<sup>46</sup>

In taking the same approach here as for AFUDC, we allow San Gabriel to benefit from carrying costs commensurate with the risk related to the Project in the instant application.

## **4. Comments on Proposed Decision**

The Proposed Decision in this matter was mailed to the Parties in accordance with Public Utilities Code Section 311 and comments were

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<sup>43</sup> Opening Brief of Cal Advocates, October 11, 2021, at 7.

<sup>44</sup> *Id.* at 5.

<sup>45</sup> D.08-05-036, Decision Determining Carrying Costs for Memorandum Account, May 29, 2008, at 11.

<sup>46</sup> This means that San Gabriel should use whatever financial instruments it would use for short-term debt in compliance with its cost of capital authorizations.

allowed under Rule 14.3. Opening Comments were filed on \_\_\_\_\_ by \_\_\_\_\_ November 17, 2022, by Cal Advocates and San Gabriel. Reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_ November 22, 2022 by Cal Advocates. San Gabriel's Opening Comments advocated revising the Proposed Decision to grant full authorized rate of return for AFUDC and post-in-service capitalized interest related to the Project.<sup>47</sup> This suggested revision was not adopted. An additional finding of fact and conclusion of law was added to clarify that San Gabriel has flexibility to change Project design details to align with requirements directed by the Division of Drinking Water.<sup>48</sup> Cal Advocates' Opening Comments supported the Proposed Decision and suggested an additional Ordering Paragraph to clarify that San Gabriel should use the then current monthly cost for short term debt during Project construction and during the post-in-service period.<sup>49</sup> This suggestion was adopted and is reflected in the revised Proposed Decision. In their Reply Comments, Cal Advocates asserted that San Gabriel's Opening Comments attempt to re-litigate issues that should be disregarded by the Commission. Cal Advocates' Reply Comments support adoption of the Proposed Decision without modifications<sup>50</sup> in regard to risk and interest rate treatment.

<sup>47</sup> Opening Comments of San Gabriel Valley Water Company on the Proposed Decision, November 17, 2022, at 2.

<sup>48</sup> Ibid, at 7.

<sup>49</sup> Opening Comments of the Public Advocates Office on the Proposed Decision, November 17, 2022, at 2.

<sup>50</sup> Reply Comments of the Public Advocates Office on the Proposed Decision, November 22, 2022, at 4.

## 5. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Hazlyn C. Fortune is the assigned ALJ in this proceeding.

### Findings of Fact

1. On January 29, 2021, San Gabriel filed A.21-01-017 requesting authority to apply facilities fees to fund upgrades for water treatment facilities in the Project.
2. On March 3, 2021, Cal Advocates filed a protest to A.21-01-017.
3. On September 27, 2021, Parties filed a Joint Motion for Approval of the Settlement Agreement and a separate motion to move exhibits into evidence.
4. The Settlement Agreement resolves all but two of the issues identified in the scope of this proceeding: (1) whether San Gabriel should be authorized to apply AFUDC at its full rate of return while the Project is under construction and not yet used and useful; and (2) whether San Gabriel should be authorized to apply its full authorized rate of return for the post-in-service capitalized interest rate.
5. Adoption of the Settlement Agreement is in the public interest because customer rates will not increase with the use of facilities fees to fund the Project and the Project will improve water quality.
6. Under the Settlement Agreement, San Gabriel will perform pilot scale testing to examine possible modifications to the existing filters and other treatment modifications that meet the requirements of the Division of Drinking Water for the Project.
7. ~~6.~~ Facilities fees represent an ongoing and dedicated source of Project funding.
8. ~~7.~~ Facilities fees are placed in an account that earns interest at the 90-day commercial paper rate.

9. ~~8.~~ San Gabriel's current rate of return is 8.12 percent.
10. ~~9.~~ Using facilities fees to offset the cost of the Project entails less risk than other financial funding options.
11. ~~10.~~ D.08-05-036 found that interest rate treatment should be based on the circumstances at hand and the type of financing being used to fund a project.

### **Conclusions of Law**

1. San Gabriel should be authorized to use facilities fees to offset the costs for Project upgrades at Fontana.
2. The Joint Motion, filed on September 27, 2021, for adoption of the Settlement Agreement complies with Article 12 of the Commission's Rules of Practice and Procedure and should be granted.
3. The Settlement Agreement (attached to this decision as Attachment A) is reasonable in light of the whole record, consistent with law, and in the public interest and should be adopted.
4. The Parties have complied with the provisions of Rule 12.1.
5. Pursuant to Rule 12.5, the Settlement Agreement does not bind or otherwise impose a precedent in this or any future proceeding.
6. It is reasonable to use D.08-05-036 to guide pre- and post-construction interest rate treatment based on the actual financing circumstances at hand.
7. San Gabriel should be authorized to use its then current monthly cost for short-term debt during the Project construction and post-in-service periods.
8. It is reasonable to make Project costs subject to a reasonableness review in San Gabriel's next GRC.

9. The design and construction costs of the Project and any accrued capitalized interest costs should be recorded in a separately identified Project Work Order.

10. San Gabriel should offset all Project costs and any accrued capitalized interest costs recorded in the Project Work Order by the amounts of facilities fees received pursuant to Fontana Tariff Schedule No. FO-FF.

11. San Gabriel should not record or include any Project costs or accrued capitalized interest costs in its rate base or revenue requirement for ratemaking purposes.

12. San Gabriel should record facilities fees and grants and contributions from other sources received to offset Project costs and accrued capitalized interest costs as contributions in aid of construction.

13. It is reasonable for San Gabriel to have flexibility to adjust the design and construction of the Project consistent with the Settlement Agreement to meet the requirements of the Division of Drinking Water for the Project.

### ORDER

#### I T I S O R D E R E D t h a t :

1. The Joint Motion, filed on September 27, 2021, for adoption of the Settlement Agreement is granted.

2. The Settlement Agreement between San Gabriel Valley Water Company and the Public Advocates Office of the California Public Utilities Commission, attached hereto as Attachment A, is approved and adopted.

3. San Gabriel Valley Water Company shall record, in a separately identified Project Work Order, the design and construction costs of the Summit Treatment

Plant covered by Application 21-01-017 and any accrued capitalized interest costs.

4. San Gabriel Valley Water Company shall record facilities fees, grants and contributions from other sources received to offset Summit Treatment Plant costs and accrued capitalized interest costs as contributions in aid of construction.

5. San Gabriel Valley Water Company shall offset all Summit Treatment Plant costs and any accrued capitalized interest costs recorded in the Project Work Order by the amounts of facilities fees received pursuant to Fontana Tariff Schedule No. FO-FF and any other financial contributions until all the Summit Treatment Plant costs and any accrued capitalized interest costs have been offset and reimbursed.

6. San Gabriel Valley Water Company shall record the cost of funding ~~of~~for Project costs and any capitalized interest costs as an allowance for funds used during construction on the unreimbursed balance, if any, in the Project Work Order until all the Summit Treatment Plant costs are offset and reimbursed.

7. San Gabriel shall not record or include any Summit Treatment Plant costs or accrued capitalized interest costs ~~and~~ in its rate base or revenue requirement for ratemaking purposes.

8. San Gabriel shall use the then current monthly cost for short-term debt during the Summit Treatment Plant Project construction and for the post-in-service period.

9. ~~8.~~ All Summit Treatment Plant costs shall be subject to a reasonableness review in ~~the~~ San Gabriel Valley Water Company's next general rate case.



10. ~~9.~~ The joint motion, filed on September 27, 2021, to receive exhibits into evidence is granted.

11. ~~10.~~ Application 21-01-017 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

# ATTACHMENT A

Document comparison by Workshare Compare on Wednesday, November 30, 2022 10:03:30 AM

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Split/Merged cell	
Padding cell	

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